SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

889

ACCIDENT INDEX BUREAU, INC., and HILLSIDE METAL PRODUCTS, INC., both corporations of the State of New Jersey,

Appellants,

vs

RAYMOND F. MALE, Commissioner of the Department of Labor & Industry, and HERBERT KORANSKY, Director of the Division of Workmen's Compensation,

Appellees

On Appeal from the Supreme Court of New Jersey

JURISDICTIONAL STATEMENT

MEREDITH, MEREDITH & DEMSKI
Attorneys for Appellants
109 South Warren Street
Trenton, New Jersey

JOSEPH B. TOBISH CO., Appellate Printing, TRENTON, N. J.

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JURISDICTIONAL STATEMENT

OFFICIAL REPORTS

This is an appeal from the Judgment of the Supreme Court of New Jersey which affirmed, per curiam, 51 N.J. 107, 237 A. 2d 880 [1968], the Judgment of the Superior Court of New Jersey, Appellate Division, Accident Index Bureau, Inc., et als vs. Male, et als, 95 N.J. Super 39, 229 A. 2d 812 [1967].

GROUNDS OF JURISDICTION

The appeal is taken pursuant to 28 United States Codes, Section 1257 (2) from the Judgment of the Supreme Court of New Jersey, decided January 22, 1968, and that Court's denial of Appellants' Petition for Rehearing on March 12, 1968. The Notice of Appeal was filed with the Clerk of the Supreme Court of New Jersey on April 16th, 1968.

Jurisdiction of this Court is conferred by 28 United States Codes, Section 1257 (2) and the following decisions: Raley v. Ohio, 360 U.S. 423, 79 S. Ct. 1257, 3 L. Ed. 2d 1344 (1959); Winters v. People of State of New York, 333 U.S. 507, 68 S. Ct. 665, 92 L. Ed. 940 (1948); Local 333 B, United Marine Division of International Longshoremen's Association, A.F.L. v. Bottle, 342 U.S. 880, 72 S. Ct. 178, 96 L. Ed. 661 (1951); Cramp v. Board of Public Instruction of Orange County, Florida, 368 U.S. 278, 82 S. Ct. 275, 7 L. Ed. 2d 285 (1961).

The statute in question is contained in the Revised Statutes of the State of New Jersey, Volume 34, and is commonly known as Chapter 164, Public Law 1966, which provides:

> "BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:
>
> 1. Notwithstanding any other provision of the chapter to which this act is a supplement or

of any other law, no records maintained by the Division of Workmen's Compensation shall be open to inspection or copying by or on behalf of any person who seeks such inspection or copying for the purpose of selling or furnishing for a consideration to others reports or abstracts of workmen's compensation records or work-injury records pertaining to any individual, except in the case of an investigation by or on behalf of an employer in connection with any pending workmen's compensation case.

2. This act shall take effect immediately."

Also in question is Administrative Directive No. 14, State of New Jersey, Department of Labor and Industry, which provides:

"Notice To All Personnel:

Subject: Injured Workmen's Records

No records of the Division of Workmen's Compensation shall be inspected or copied by anyone unless and until the hereinafter stated form is signed by the persons seeking such inspection:

I, the undersigned, do hereby state under penalty of the law, that I seek the inspection or copying of the records of the Division of Workmen's Compensation concerning_____ _____on behalf of_____ (employer) in connection with a pending workmen's compensation case by said_____ _____(petitioner).

_____

Dated:_____

(ref; A-542, Chap. 164, P.L. 1966, effective 6-18-66).

Herbert Koransky,
Director

June 29, 1966."

QUESTIONS PRESENTED

The questions presented include:

1. Do Chapter 164, P. L. 1966 and Directive 14, contravene the freedom of speech, due process and equal protection guaranteed in Amendment I, V and XIV of the United States Constitution?

2. Is Chapter 164, P. L. 1966, a Bill of Attainder prohibited by Article I, Section 10 of the United States Constitution?

STATEMENT OF FACTS

This case was commenced by way of Complaint and Order to Show Cause, a temporary Restraining Order having originally been issued to stay the provisions of Chapter 164, P. L. 1966. Upon the return day of the Order, the temporary restraining Order was dissolved and an appeal was taken to the Superior Court of New Jersey, Appellate Division.

While below in the Appellate Division, this case was technically an interlocutory appeal from the refusal of the trial court to issue an interim stay. However, because there were no material disputes of fact between the parties, it was submitted that the determination of this cause would end the controversy, subject only to the statutory appeals allowable to the Supreme Court of New Jersey and this Court.

Petitioner, Accident Index Bureau, Inc., is engaged in the business of searching public and other records and providing subscribers with individual abstracts of such records. Subscribers of Accident Index include motor carriers, insurance companies, self-insureds and corporate employers in various phases of industry and commerce.

The Plaintiff, Hillside Metal Products, Inc., is a New Jersey manufacturer, a subscriber of the Plaintiff and is subject to the provisions of Volume 34 of the Revised Statutes, of which Chapter 164, P. L. 1966 is an amended part.

At the time suit arose, existing contracts between Accident Index and its subscribers numbered in excess of 100. These provided that subscribers, upon payment of an annual fee and a stated fee for each abstract, were entitled to receive, and Accident Index is obliged to furnish requested reports. To facilitate the transmittal of information, request and report forms are used by the contracting parties. Upon receipt of an individual request, Accident Index checks its own files, state records, court records and such other sources as may reflect the information sought and submits a report to its subscriber.

A major portion of Accident Index's searching consists of inquiry into records required by statute to be maintained and filed in the Division of Workmen's Compensation. Generally, a subscriber's inquiry relates to accident records, medical histories, safety records and similar matter. Requests for information are on an individual or Petitioner to Petitioner basis. Generally, requests are equally divided, in volume, between corporate subscribers and insurance carriers. A small percentage involve Workmen's Compensation self-insurers.

While Accident Index has no direct knowledge of the manner in which its abstracts are used or the purpose for which they are sought, the customary uses include the following:

> "(1) To determine the accuracy of employment applications. (2) To facilitate thorough pre-employment physical examinations by providing the examining physician with a more complete history of physical impairment. (3) To enable prospective employees to be placed in safe jobs within the limitations of their physical abilities. (4) To

enable the proper placement of handicapped individuals so as to safeguard other employees with whom they work. (5) To assist the defense of Workmen's Compensation cases and other personal injury claims where the same or similar injury is sought to be the subject of present recovery. (6) To enable the proper application of R.S. 34:15-12(d) in proceedings brought under R.S. 34:15-7 et seq. (7) And for such other purposes as the same or similar records are customarily used".

The records maintained by the Division of Workmen's Compensation constitute the only central and complete source of accident and occupational disease information in this State. Without access to these records, the Petitioner could not feasibly carry out its existing contracts.

The Petitioner has operated in the above manner since 1954. In 1957, it advised the then Director of the Division of Workmen's Compensation of the association of Miss Ethel Mullen, formerly an employee of the Division, with the Accident Index Bureau as corporate secretary. The director, in return correspondence, indicated his awareness of the fact that the Petitioner did "...study and abstract information from records held in their office" and noted that "...all courtesies would be extended to Miss Mullen in this operation".

From 1957 through the initial period of this litigation, the Petitioner has factually searched and abstracted records in the Division of Workmen's Compensation. These records generally consist of the pleadings in formal cases, viz, Claim Petition, Answer and Determination. On occasion, recourse is also had to the record of "informal Hearing" held by Division Referees. Employees of the Petitioner formerly conducted their searching in the quarters available to the Division of Workmen's Compensation, with permission, without hinderance and with cooperation.

Sometime prior to March 26, 1958, Commissioner Holderman requested an opinion from the Attorney General's office as to whether or not the Division of Workmen's Compensation could refuse to permit the search of its records by Accident Index Bureau, Inc. The resultant opinion informed the Commissioner that since "the operation of Accident Index Bureau, Inc. indicates neither interference with the performance of official duties... [of Division personnel] nor indiscriminate use of its files... Access must...be granted unless it is sought for an unlawful, improper or illegitimate purpose adverse to the public convenience or welfare". The opinion went on to aver that the public policy of New Jersey, as reflected in the Workmen's Compensation Act, was "'to shoulder on industry the expense incident to the hazards of industry...' In order to accomplish this purpose, employees must be free to file claims without fear of retribution". It noted, secondly, that the passage of the One Per Cent Fund Act reflected a State policy "to vocationally rehabilitate our physically handicapped for placement in remunerative employment" (FA50a). From these two premises, the opinion concluded that since "No person can lawfully do that which has a tendency to be injurious to the public or against the public good" and "The Service...[of Petitioner] is designed to discourage the employment of the handicapped and would frustrate....the policy of this State concerning industrial injuries...", the Division could refuse to permit a search of its records by Petitioner "...where the purpose of the search is to provide employers with information concerning prospective employees".

In September, 1958, the Executive Vice-President of the New Jersey State Council, C.I.O., Joel R. Jacobson, wrote Director Parsekian indicating generally his organization's disapproval of employers gaining access "to workmen's compensation records and mak[ing] available to employers or insurance carriers records of workmen's compensation awards

and other matters which may be contained in the workmen's compensation file" In his letter, Mr. Jacobson opined that the currency of such information would prevent handicapped workers from finding employment and would discourage industrial workers from filing workmen's compensation claims. Enclosed was a brochure from the Petitioner which Mr. Jacobson undertook to interpret. The letter terminated with a demand that inspection be allowed "only if that worker authorizes in writing that the file may be made available".

Nothing apparently came of this communication and employees of the Plaintiff continued to search Division records as theretofore.

In May, 1963, there was enacted Chap. 73, P. L. 1963, commonly known as The Right To Know Law. On July 31, 1963, the Commissioner of Labor allegedly, pursuant to the provisions of Executive Order No. 7, promulgated a regulation which provided; inter alia:

> "1. All records, except those records set forth in Section 4 hereof, which specifically are required by statute to be made, maintained or kept by the Department of Labor and Industry shall be public records...
>
> "2. All other records of the Department... shall not be subject to the provisions of Chapter 73, P. L. 1963 and shall be available for inspection ...only to the extent and for such purposes as may be expressly authorized by the Commissioner...
>
> * * *
>
> "4. The following records shall not be deemed public records, copies of which may be purchased or reproduced, under the provisions of Chapter 73, P. L. 1963:

> a. All records required by statute to be made, maintained or kept on file pursuant to the provisions of the Workmen's Compensation Law, R.S. 34:15-1, et seq., if the purpose of the inspection or copying is to provide employers with information concerning prospective employees".

The effective date of this (and other) regulations was postponed by a series of Executive Orders until October 1, 1963. Between August 1, 1963 and October 29, 1963, correspondence ensued between the President of Accident Index Bureau, Inc. and Governor Hughes, Acting Director Franklin and Mr. Kirchner, Governor's counsel. The initial letter of the Governor conveyed the impression that the Petitioner's operations were not affected by Chapter 73, P.L. 1963 or by the Executive Orders—or at least it so appeared to the Petitioner. Subsequent correspondence between the Petitioner and Acting Director Franklin and Mr. Kirchner was productive of the ultimate conclusion:

> "We conclude that the Department of Labor and Industry acted in conformity with the provisions of Chapter 73, P.L. 1963, in promulgating the regulation containing...[the above] exemption."

This and subsequent correspondence invited judicial review and the litigation followed. No effort was made to enforce the opinion of March 1958 or that regulation until December 19, 1963. On that date, persons searching Division records were required to sign the following:

> "The undersigned hereby represents that his inspection of the records of the Division of Workmen's Compensation on the date indicated below is not for the purpose of supplying employers with information concerning prospective employees".

On January 6th, the Appellate Division granted ad interim stay of the subject regulation.

After final argument, the Court declared the prohibitive section of the regulation, 4(a), to be invalid and unenforceable. 83 N.J. Super 293, 199 A 2d 656 (App. Div. 1964).

The opinion of this Court was affirmed in October, 1965 per curiam in 46 N.J. 160, 215 A 2d 529 (S. Ct. 1965).

Subsequent to these opinions, the Legislature enacted Chapter 164, P.L. 1966, effective June 18, 1966, which, in its applicable parts, undertook to bar:

> "...inspection or copying by or on behalf of any person who seeks such inspection or copying for the purpose of selling or furnishing for a consideration to others reports or abstracts of workmen's compensation records or work injury words..."

Thereafter, the Director of the Division of Workmen's Compensation, further restricting access to such records, undertook to issue a directive which sought to bar any copying or inspection unless on behalf of a named employer in connection with a pending workmen's compensation case of a named petitioner.

Upon implementation of the legislation and directive, the Plaintiffs filed an In Lieu action pursuant to R.R. 4:88-2 in the Law Division of the Superior Court, by way of an Order to Show Cause. A temporary restraint was granted at the time of the signing of the Order.

Thereafter, upon argument and brief, the Law Division, per Honorable Philip R. Gebhardt, t/a, dissolved the temporary restraint and denied interim relief, barring enforcement, until final adjudication.

From the Order Denying Interim Relief, R.R. 4:88-5, the Plaintiffs sought interlocutory appeal to the Appellate Division. In support of that motion, an additional

affidavit was submitted. Essentially, it reflected the catastrophic impact which both regulation and statute have had and will have upon the enterprise of the Plaintiff, Accident Index Bureau, Inc.

The lower Court was upheld by both the Appellate Division and the Supreme Court of the State of New Jersey and it is their decision that is on appeal to this Court.

The questions the Appellants desire this Court to review were first raised in the Appellant's Brief prepared for the Superior Court of New Jersey, Appellate Division in the Statement of Questions Involved.

That Court essentially determined that free speech, due process and equal protection were not denied by Chapter 164, P.L. 1966, Directive 14 because the distinction between who may and who may not inspect records was not invidious to the point of denying equal protection and due process. (See page 9a of this Jurisdictional Statement).

That Court also determined that no Bill of Attainder was present in that the statute and directive applied to all agencies similar to that of the appellant, Accident Index Bureau, Inc. (See page 9a of this Jurisdictional Statement).

Free speech was held not to be violated because where a threat to public welfare is felt to exist, the dissemination of material, even though a public record made in open court, may be prohibited (see page 9a of this Jurisdictional Statement).

It is submitted that the above holdings are of a nature to confer jurisdiction of this Court over the case sub judice.

FEDERAL QUESTIONS ARE SUBSTANTIAL

The rationale for the appellant's belief that the questions presented are substantial enough to require plenary consideration with briefs on the merits and oral argument for their resolution is as follows.

Chapter 164, P.L. 1966 essentially states that records, the subject of hearing in an open courtroom, may not be copied by anyone who does so for a consideration. It does not purport to insulate these records from inspection nor does it prevent a prospective employer or anyone else with a legitimate interest in their content from himself inspecting them. Rather, it bars only such persons who furnish abstracts of them to others for a consideration.

Because of the manner in which Accident Index operates, there is no question of the legitimacy of an employer's interest in a particular record. Accident Index, acts only when it receives a request pertaining to a particular name and then supplies an abstract to the requesting party, of any record under that name.

Under the provisions of the statute, there is no doubt but that the proprietor of an individual proprietorship could himself examine such records without let. In all probability, a salaried corporate employee could similarly examine, since, he would not be selling to his employer and, presumably, his salary could hardly be construed as constituting a consideration for furnishing a particular abstract. In short, the only purpose and the only impact of the legislation is to discriminate against Accident Index and similar organizations rendering services for, and at the request of employers. This gives rise to an unreasonable discrimination between employers who use their own talents or those of salaried agents, on the one hand and those who use the services of independent contractors to perform the identical job on the other.

Such an approach is arbitrary in that the right to inspect turns upon whether the inspector is an agent/employee of the prospective employer, as opposed to

his being an independent contractor searching the records at the request of the employer.

The above is also contrary to the principle that entities which are sui juris may consent to others acting with the same effect as if they acted in person. Restatement of Agency 2nd, Vol. I, Sec. 20; American Jurisprudence 2nd, Vol. 3, Agency, Sec. 20.

A case in this jurisdiction which bears upon the question at hand in Barber v. West Jersey Title & Guarantee Co., 53 N.J. Eq. 158, 32 A. 222 (1895). In this case, West Jersey Title was a New Jersey corporation organized to examine, insure and guarantee titles. The defendant, Barber, was the County Clerk and the keeper of public records who sought to deny West Jersey title access to these records. The Court stated:

> 'It is conceded that the corporation complainant is entitled to the same right of access to and examination of the public records of the County as an individual would be. 'When employed to examine the title to any particular piece of property, such corporation is subrogated to the right of its employer to have such access and the fact that it contemplates making a contract of guaranty of the title to the land in question, does not detract from such right of access". Citing Lum v. McCarty, 39 N.J.L. 287 (1877).

As applied to the instant case, Barber v. West Jersey Title makes it clear that the principal's right to examine records is subrogated to its agents when the latter is employed by the principal.

Due process and equal protection are denied to the appellants for the following reason.

It goes without saying that General Motors, U.S. Steel and a host of other large corporations can and frequently do send their own personnel to search Workmen's Compensation Records. Smaller employers

cannot feasibly engage in the same activity and, accordingly, employ, on a fee or similar basis, others to do it form them. Our own field of law provides a ready example. House counsel are familiar fixtures in large corporations. Smaller enterprises engage the services of an individual attorney to perform the same kind of work, at the same time that it is being performed for a host of other clients. Large companies have accounting staffs, small businesses severally or individually engage an accountant who divides his energies among his clients.

In the instant case, the effect of the statute is simply to prohibit or financially disadvantage smaller employers or companies from accomplishing the self same act permitted larger enterprises as of course.

The statute constitutes an abridgement of freedom of speech because it seeks, through the device of prior censorship, to prevent a record searcher from communicating factual knowledge to a particular individual who physically requests it. Incredibly, censored in their search are those who work on a fee basis. Uncensored are those who do it themselves or through the medium of their own employees, irrespective of the use to which this latter group intend to put the information so gleaned. Thus, the avoidance of no evil is sub-served by the statute at all. This apart, however, there are very few circumstances which have been held to justify any limitations on the right of dissemination.

In the instant case, and as indicated in the Statement of Facts, the statute is a direct and readily traced result of a pamphlet. For a single writing to generate a series of heavy-handed governmental assaults upon a single and intrinsically innocuous business, is a rather sorry commentary on the pervasive efficacy of constitutional guarantees.

Finally, the statute is invalid as a Bill of Attainder because this legislation is so obviously aimed at precluding appellant, Accident Index Bureau, Inc., from pursuing a lawful advocation.

As early as 1958, Accident Index Bureau, Inc. was singled out, by name, in a complaint letter from the Legislative Director of the C.I.O. to the Director of the Division of Workmen's Compensation. In the same year, it was the subject, by name, of an Attorney General's opinion. In 1963, it was the subject of a tailored regulation, later declared invalid, which sought to prohibit inspection if information was to be divulged to prospective employees. In September of 1963, Accident Index Bureau, Inc. was the recipient of a rather unprecedented inquiry from the Acting Director of the Division of Workmen's Compensation seeking a copy of its contract with its subscribers.

In sum, the limited number of people or corporations who provide abstracts of workmen's compensation records, the highly limited number who do so for a stated fee per abstract on an agency or independent contractor basis, and the foregoing history inescapably point to this plaintiff as the single object of Chap. 164, P.L. 1966.

Bills of Attainder have been the subject of fairly recent treatment by this Court in United States v. Brown, 381 U.S. 437, 14 L. Ed. 2d 484, 86 S. Ct. 1707 (1965).

> " 'The deprivation of any rights, civil or political, previously enjoyed may be punishment, the circumstances attending and the causes of the deprivation determining this fact . . . Disqualifications from the pursuits of a lawful avocation or from positions of trust, or from the privilege of appearing in the courts, or acting as an executor, administrator or guardian may also and often has been imposed as punishment.
>
> * * *
>
> " '[L]egislative acts, no matter what their form that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punichment on them without

a judicial trial are bills of attainder prohibited by the Constitution . . .'

'Historical considerations by no means compel restriction of the bill of attainder ban to instance of retribution A number of English bills of attainder were enacted for preventive purposes—that is, the legislature made a judgment, undoubtedly based largely on past acts and associations . . . . that a given person or group was likely to cause trouble . . . and therefore inflicted deprivations upon that person or group in order to keep it from bringing about the feared event". [emphasis supplied].

Chapter 164, P. L. 1966 is no more or less, than a bill identifiably tailored to penalize Accident Index Bureau, Inc. and those of its subscribers who choose to secure information through its services. As such, it is a Bill of Attainder, duly proscribed by Federal and State Constitutions.

CONCLUSION

For the indicated reasons above, it is respectfully requested the Appellants be allowed to file Briefs on the merits of the questions involved in order that they be resolved by this Court.

Respectfully submitted,

MEREDITH, MEREDITH & DEMSKI,
Attorneys for the Appellants.

By:

BRYCE S. CHASE

APPENDIX

OPINION

Superior Court
Appellate Division

Argued April 17, 1967
Decided May 5, 1967

Before Judges Goldmann, Kilkenny and Collester.

On appeal from Superior Court, Law Division, Mercer County.

Mr. Edward B. Meredith argued the cause for appellants (Messrs. Meredith & Meredith, attorneys).

Mr. Richard Newman, Deputy Attorney General, argued the cause for respondents (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

The opinion of the court was delivered by

KILKENNY, J.A.D.

Pursuant to leave granted under R.R. 2:2-3(a), plaintiffs appeal from an interlocutory order of the Law Division denying their application for a preliminary injunction pending final hearing, and dissolving an ex parte temporary restraint theretofore granted.

In their complaint plaintiffs sought a declaratory judgment (1) permanently enjoining defendants from enforcing the provisions of chapter 164 of the Laws of 1966; (2) permanently enjoining defendant Herbert Koransky from enforcing his Division Directive No. 14; (3) permanently enjoining defendants from interfering with or hindering plaintiff Accident Index Bureau, Inc. from examining and making copies of records made public by R.S. 34:15-59; (4) adjudging and declaring chapter 164 unconstitutional and void, and (5) adjudging and declaring the directive unconstitutional and void.

At oral argument the parties stipulated that we might make a final disposition of the appeal upon the basis of

the record before us, except for a copy of the present advertising brochure now circulated by Accident Index Bureau, Inc. to be furnished to the court, as though the final hearing had been concluded upon the basis of the record as supplemented and the relief sought by plaintiffs had been denied. The brochure has been furnished and the record is agreeably supplemented thereby. Hillside Metal Products, Inc., a customer of the co-plaintiff, has been joined as a party plaintiff, but the issue really concerns the validity of the statute and directive in their relation to Accident Index Bureau, Inc.

This appeal is a sequel to our decision in Accident Index Bureau, Inc. v. Hughes, 83 N.J. Super. 293 (App. Div. 1964), affirmed 46 N.J. 160 (1965). We there held that an executive order by the Governor under "The Right to Know Law," L. 1963, c. 73 N.J.S.A. 47:1A-1 et seq., and a regulation based thereon by the Commissioner of Labor and Industry, deeming workmen's compensation records not to be public if the purpose of inspecting or copying them was to provide employers with information concerning prospective employees, were invalid. We concluded that the order and regulation contravened substantive due process. We need not repeat herein all of the reasons which impelled that conclusion or the details of the rationale of the Supreme Court in its affirmance.

Following that litigation and evidently motivated by a statement in the Supreme Court opinion to the effect that "nothing we have said should be thought to question the power of the Legislature to deal with the problem" (46 N.J. at p. 166), there was adopted chapter 164 of the Laws of 1966, which provides:

> "Notwithstanding any other provision of the chapter to which this act is a supplement or of any other law, no records maintained by the Division of Workmen's Compensation shall be open to inspection or copying by or on behalf

> of any person who seeks such inspection or copying for the purpose of selling or furnishing for a consideration to others reports or abstracts of workmen's compensation records or work-injury records pertaining to any individual, except in the case of an investigation by or on behalf of an employer in connection with any pending workmen's compensation case."

Obviously, this new statute is aimed at curbing only the activities of commercial agencies, such as Accident Index Bureau, Inc., engaged in the business of "selling or furnishing for a consideration to others" reports or abstracts of workmen's compensation records. The employers themselves, or their employees, are not barred from inspecting or copying the workmen's compensation records for any purpose. It is the performance of this inspecting and copying by those who "sell or furnish" the information to others "for a consideration" which alone comes within the statutory bar. By way of exception the ban does not extend to the commercial agencies if the information is gathered in connection with any pending workmen's compensation case.

Directive No. 14, issued by defendant Koransky as Director of the Division of Workmen's Compensation to all personnel on June 29, 1966, provides:

> "No records of the Division of Workmen's Compensation shall be inspected or copied by anyone unless and until the hereinafter form is signed by the persons seeking such inspection:
>
> I, the undersigned, do hereby state under penalty of the law, that I seek the inspection or copying of the records of the Division of Workmen's Compensation concerning_____ on behalf of_____ (employer) in connection with a pending work-

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men's compensation case by said _____
_____(petitioner.)

_____

Date:_____"

This directive is based upon chapter 164 of the Laws of 1966, effective June 18, 1966. The word "anyone" appearing therein, we are told, is "only meant to refer to parties covered by chapter 164, and it is applied by the Division in accordance with this construction." If that is so the directive should have been no broader in its limitation than chapter 164.

Manifestly, validity of the directive depends upon the statute upon which it is bottomed. Accordingly, we concern ourselves only with the challenge made to the constitutionality of this statute. In substance then, the new statute and directive thereunder would accomplish essentially what the executive order and Commissioner's regulation in the former case were intended to effect-preclusion of a commercial agency from inspecting and copying workmen's compensation records for the purpose of informing employers of the industrial accident histories of prospective employees.

Chapter 164 represents a departure from the previous legislative policy with reference to workmen's compensation records. R.S. 34:15-59 had provided: "Such records shall be open to the inspection of the public." The present enactment states plainly that they shall not be open to inspection and copying by persons who seek such inspection or copying in order to sell or furnish the information thus gathered to others "for a consideration," except in connection with any pending workmen's compensation case. Thus, plaintiff reporting agency is now effectively precluded from inspecting these records in order to supply employers with the workmen's compensation histories of prospec-

tive employees. On the other hand, the employers themselves have free access to these records for the very purpose for which the reporting agency has been heretofore engaged to gather the information.

It is clear, then, that the law discriminates between those who may and those who may not inspect and copy these records—albeit the purpose for the inspection and the copying is the same. The issue is whether such discrimination comports with the constitutional guarantees of due process of law and the equal protection of the laws. United States Constitution, Amendment XIV, Section I.

Not all classifications for purposes of Legislation are invalid. It is the invidious discrimination, lacking any valid basis for its existence, which violates the constitutional mandates. David v. Vesta, 45 N.J. 301 (1965). In that case, our Supreme Court upheld the New Jersey "Law against Discrimination," N.J.S.A., 18:25-1, et seq., applicable generally to the sale or rental of housing accommodations, even though accommodations in single-family homes and in certain two-family homes and three-family residences were not covered. As the court said:

> "More specifically, evils in the same field may be of different dimensions and proportions, and the reform may therefore take one step at a time, attacking the evil where it seems most acute to the legislative mind." (at p. 315).

The court noted that the one who assails legislative classisication must carry the burden of showing its arbitrariness. It further observed that a legislative classification having some reasonable basis is not invalid merely because it is not made with mathematical nicety or because in practice it results in some inequality. (45 N.J., at pp. 314-315.)

David v. Vesta reiterated what Chief Justice Weintraub had said earlier for the court in New Jersey

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Restaurant Ass'n v. Holderman, 24 N.J. 295 (1957):

> "Thus it is not enough to demonstrate that the legislative objective might be more fully achieved by another, more expansive classification, for the Legislature may recognize degrees of harm and hit the evil where it is most felt. * * * The Legislature may thus limit its action upon a decision to proceed cautiously, step by step, or because of practical exigencies, including administrative convenience and expense, * * * or because of 'some substantial consideration of public policy or convenience or the service of the general welfare.' * * * Hence it may 'stop short of those cases in which the harm to the few concerned is thought less important than the harm to the public that would ensue if the rule laid down were made mathematically exact.' " (at pp. 300-301).

In that case the Commissioner of Labor and Industry had made a minimum fair wages standards order relating to restaurant occupations, but excepted restaurants operating in hotels. The order was held to be not violative of the equal protection clause because of such classification. The Chief Justice noted that "where an act of the Legislature is challenged, there is no way to corral the considerations which moved the individual lawmakers to vote for the measure * * *; and if any state of facts can reasonably be conceived which would support the classification, the act must be sustained." (at p. 301).

In our earlier opinion we found lacking any reasonable basis for distinguishing between an employer's agent or employee, who would be permitted to inspect and copy the records, and the employer's chosen independent contractor, who would not. 83 N.J. Super., at p. 301. We also found invidious the former classifi-

cation which would deny the right to a reporting agency to inspect and copy the records before the employment commenced, but permit it at any time after the hiring, no matter for what purpose or how short that period might be. The latter infirmity does not exist in the present statute and directive under review. The commercial agency is barred from inspection and copying before and after the hiring, except as to a pending workmen's compensation case. As to our assertion that the distinction between an employer's agent and his independent contractor was "arbitrary and discriminatory," 81 N.J. Super., at p. 301, the Supreme Court did not base its decision thereon, or express concurrence in that rationale. Rather, it found the regulation in question "not appropriate to the end in mind," 46 N.J., at p. 165, and stated:

> "A regulation denying access to the records by an independent agency which interferes with the basic objectives of the compensation law described above, with standards suitably expressed to forewarn, would be to the point." (at p. 166).

It went on to conclude, as noted above, that nothing it said "should be thought to question the power of the Legislature to deal with the problem." Ibid.

We noted in our former opinion, 83 N.J. Super., at p. 298, that the common law right of a citizen to inspect public records has never been an unlimited one. The right has been subject to the requirement of a lawful, proper and legitimate purpose and that it be "not adverse to the public interest." In adopting chapter 164 the Legislature has evidently concluded that inspection and copying of workmen's compensation records of past histories of prospective employees, when done by commercial agencies such as plaintiff, is adverse to the public interest. It might have barred all persons, including prospective employers, from

such an inspection, because of its solicitude for those disabled by reason of prior industrial accidents.

Our public policy, as expressed in many provisions of our Workmen's Compensation Law, is to help rather than hinder the disabled in their search for employment. The labor unions have for many years importuned the Legislature to restrain reporting activities such as those of plaintiff, particularly deemed obnoxious on account of the scare-type advertising indulged in. They expressed concern as to the adverse impact upon those seeking employment who had been or might be unfortunate victims of an industrial accident and honestly asserted a claim for benefits under the act. That serious, potential, adverse effect is well described by Justice Francis in his dissenting opinion in the former case. 46 N.J., at pp. 167-170. Plaintiff's latest advertising brochure has been toned down, but its solitary and so-called "typical report" detailed therein reflects that employee "John Doe" made 13 claims for workmen's compensation benefits, in seven of which "no award" was made. This selected and obviously extreme example of an accident-prone and oft-unworthy claimant speaks for itself. The warning "Why hire by Crystal Ball?" present in the former brochure is repeated. A prior restraint upon a revision to what plaintiff has done in the past in its advertising or what other similar agencies might do is not feasible in the face of the constitutional hurdles of freedom of speech and of the press.

There is a conflict between plaintiff's commercial enterprise, because of its potentiality to induce the non-hiring of those previously disabled in industrial accidents, and the public policy of the State encouraging the employment of the disabled. The ready availability of plaintiff's services at a nominal cost, encouraged by its advertising no matter how innocuous it may presently appear to be, has a tendency offensive to the public policy. The Legislature, in its wisdom,

could properly find a substantial good to be accomplished, viz., the employment of the disabled, and an evil to be eliminated, viz., commercial activities disclosing for a profit to employers prior workmen's compensation histories of prospective employees with the consequential non-hiring of the victims of industrial accidents, no matter how honest were their claims. Its adoption of chapter 164 may be regarded at least as a first step in fulfillment of its purpose. Substantive due process has been thus satisfied; and the distinction between who may and who may not inspect the records is not invidious to the point of denying plaintiff agency equal protection of the laws.

We find lacking in merit plaintiff's contentions that chapter 164 is invalid as a "bill of attainder" and also constitutes a palpable abridgment of freedom of speech. This statute is not a bill of attainder. "The singling out of an individual for legislatively prescribed punishment constitutes an attainder * * *." Communist Party v. S.A.C. Board, 367 U.S. 1, 86 (1961). Plaintiff agency has not been thus singled out. The statute is applicable to all similarly situated and will apply to others organized in the future. "Legislatures may act to curb behavior which they regard as harmful to the public welfare, whether that conduct is found to be engaged in by many persons or by one." Id., at p. 88.

Nor has plaintiff's freedom of speech been enjoined by the statute. The dissemination of information is not absolute. It may be limited in order to obviate a threat to the public welfare. Gibson v. Florida Investigating Committee, 372 U.S. 539 (1963). There are instances where denial of access to public records has been upheld as valid. See cases cited in our former opinion, 83 N.J. Super. at pp. 298-299, and in Justice Francis' dissent, 46 N.J., at p. 167. Presumably, the Legislature found a threat to the public welfare to exist when it enacted this statute.

Opinion

The Supreme Court expressed concern in its opinion, 46 N.J., at p. 166, that the executive order and administrative ruling then involved might offend the existing statutory law, e.g., R.S. 34:15-59, requiring that workmen's compensation records "shall be open to the inspection of the public," and the 'Right to Know" law, N.J.S.A. 47:1A-1 et seq. That same concern does not exist in the present situation because the statute under review is an express legislative supplement of Title 34, Chapter 15.

If this appeal had been limited to the question of the propriety of the trial court's denial of the preliminary injunction, we would have had no hesitancy in affirming that order. Chapter 164 is presumptively valid. Plaintiffs, moreover, did not demonstrate the probability of irrepearable harm being sustained by them pending a final determination. See Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J. Eq. 299 (E. & A. 1878). An interlocutory injunction should not issue if plaintiff's asserted rights are not clear as a matter of law. General Electric Co. v. Gem Vacuum Stores, 36 N.J. Super. 234, 236 (App. Div. 1955). Certainly, that was the situation here.

We hold that chapter 164 of the Laws of 1966 and Directive No. 14 of the Division of Workmen's Compensation are constitutional and valid. Accordingly, the interlocutory order denying plaintiffs' application for a preliminary injunction is affirmed.

The matter is remanded to the Law Division for entry of a judgment declaring the statute and directive valid and denying the application for a permanent injunction.

OPINION

Supreme Court of New Jersey

Argued January 8, 1968.
Decided January 22, 1968.

On appeal from a judgment of the Superior Court, Appellate Division, whose opinion is reported at 95 N.J. Super. 39.

Mr. Edward B. Meredith argued the cause for the appellants (Messrs. Meredith, Meredith & Demski, attorneys.)

Mr. Stephen Skillman argued the cause for the respondents (Mr. Arthur J. Sills, Attorney General, attorney; Mr. Alan B. Handler, of counsel.)

PER CURIAM

The judgment is affirmed for the reasons expressed in the opinion of Judge Kilkenny in the Appellate Division.

DENIAL OF PETITION FOR REHEARING
(Filed 3/12/68)

No Justice who voted with the majority having moved a reconsideration, the petition for rehearing is denied.

Witness, the Honorable Joseph Weintraub, Chief Justice, at Trenton, this 12th day of March, 1968.

A True Copy

John H. Gildea /s/
JOHN H. GILDEA
Clerk.